state commerce. *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489. See *Paul* v. *Virginia*, 8 Wall. (U. S.) 168, 182. Generally the courts have avoided this problem by holding, as does the second case, that the law in question applies only to suits arising from intrastate business. *Mearshon & Co.* v. *Pottsville Lumber Co.*, 187 Pa. 12, 40 Atl. 1019. Even when construed as in the first case, the statute has been sometimes considered valid. *Wilson-Moline Buggy Co.* v. *Hawkins*, 80 Kan. 117, 101 Pac. 1009. But the rule established by the first principal case has been adopted by several other courts, and seems plainly sound. *Bateman* v. *Western Star Milling Co.*, 1 Tex. Civ. App. 90, 20 S. W. 931; *Murphy Varnish Co.* v. *Connell*, 10 N. Y. Misc. 553, 32 N. Y. Supp. 492. As to the general right to do interstate commerce, it is settled that such restrictions as were here imposed are invalid. *International Textbook Co.* v. *Pigg*, 217 U. S. 91. To put similar conditions precedent on the right to sue in the state courts indirectly hampers interstate commerce, by shutting off the foreign corporation from the normal mode of enforcing its rights against those with whom it deals. It is no more legitimate to require a choice between this hardship and the expense of complying with the law than to demand absolute obedience to the conditions of the statute. See 23 HARV. L. REV. 66.

INTERSTATE COMMERCE — CONTROL BY STATES — STATE TAX ON INTERSTATE C. O. D. SHIPMENTS OF INTOXICATING LIQUORS: WEBB-KENYON ACT. — A state statute imposed an occupation tax of five thousand dollars on each place maintained for handling liquors C. O. D. TEXAS, LAWS OF 1907, c. 4. The defendant pleads this statute as a defense to a refusal to deliver an interstate C. O. D. shipment of liquors made by the plaintiff. *Held*, that the statute is constitutional. *Rosenberger* v. *Pacific Express Co.*, 167 S. W. 429 (Mo.).

The holding of the principal case, that collections on interstate C. O. D. shipments are not part of interstate commerce, seems unsound, for the commerce clause of the Constitution has been broadly construed to include all dealings intimately related to the importation of goods or passengers from one state to another. *Butler Bros. Shoe Co.* v. *United States Rubber Co.*, 156 Fed. 1. Thus a license tax on firms shipping goods into the state C. O. D. has been held an unconstitutional regulation of interstate commerce. *Norfolk & Western Ry. Co.* v. *Sims*, 191 U. S. 441. For the same reason a state statute prohibiting the delivery of any C. O. D. shipment of intoxicating liquors is unconstitutional. *Adams Express Co.* v. *Kentucky*, 206 U. S. 129. The tax imposed in the present case was so high as to amount to a prohibition of such shipments of liquors into the state, and seems clearly unconstitutional unless aided by the so-called Webb-Kenyon Act, to which the court did not refer. *Louisville & Nashville R. Co.* v. *Cook Brewing Co.*, 223 U. S. 70. In substance, this statute prohibits interstate shipments of liquor intended to be used in violation of the law of the state of destination. 37 U. S. STAT. AT LARGE, 699. See 27 HARV. L. REV. 763. Various constructions have been put on this act by the state courts, but the better view seems to be that it makes interstate shipments illegal only where there is an intent to use the liquors for a purpose unlawful by virtue of a state statute valid as an exercise of the police power independent of this act. *Southern Express Co.* v. *State*, 66 So. 115 (Ala.); *Palmer* v. *Southern Express Co.*, 165 S. W. 236 (Tenn.); *contra*, *Adams Express Co.* v. *Beer*, 65 So. 575 (Miss.). See 28 HARV. L. REV. 225. Accordingly, under this view, the federal law would not cure the unconstitutionality of the present statute.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — COVENANT TO REPAIR — RIGHT OF THIRD PARTY UNDER COVENANT. — The defendant leased a certain dwelling house to a tenant with a covenant to keep

the premises in repair. The plaintiff, the child of a neighbor, whom the court assumed to be an invitee, was injured by reason of the disrepair of the tenant's premises. *Held*, that the plaintiff can recover. *Flood* v. *Pabst Brewing Co.*, 149 N. W. 489 (Wis.).

Apart from an express covenant to repair, a landlord owes no duty either to a tenant or a third party to take care that the demised premises are safe. *Lane* v. *Cox*, [1897] 1 Q. B. 415; *Mellen* v. *Morrill*, 126 Mass. 545. Nor does a covenant to repair, as a general rule, render the landlord liable, even to the tenant, for personal injuries resulting from the want of repair. He is not liable in tort because it is a mere nonfeasance, nor in contract because the damages are said to be too remote. *Tuttle* v. *Gilbert Mfg. Co.*, 145 Mass. 169, 13 N. E. 465; *Dustin* v. *Curtis*, 74 N. H. 266, 67 Atl. 220; *Schick* v. *Fleischhauer*, 26 App. Div. 210, 49 N. Y. Supp. 962. Third parties, of course, cannot sue on the contract as such. *Cavalier* v. *Pope*, [1906] A. C. 428; see *Burdick* v. *Cheadle*, 26 Oh. St. 393, 397. It is also generally held that strangers cannot recover from the landlord in tort by showing merely a breach of the contract to repair. *Frank* v. *Mandel*, 76 N. Y. App. Div. 413, 78 N. Y. Supp. 855; see *Shackford* v. *Coffin*, 95 Me. 69, 49 Atl. 57; *Burdick* v. *Cheadle*, *supra*. A recent Kentucky case reaches this result. *Dice's Adm'r* v. *Zweigart's Adm'r*, 171 S. W. 195. Some jurisdictions, however, allow a recovery on the theory of preventing circuity of action. See *Lowell* v. *Spaulding*, 4 Cush. (Mass.) 277, 279. This view seems to be untenable where the tenant cannot recover in contract from his landlord the damages collected from him by the injured third party, because of the remoteness of the damage. *Schick* v. *Fleischhauer*, *supra*. Other jurisdictions allow an invitee of the tenant to recover in tort on what is conceived to be an affirmative duty of due care to make the premises safe, arising out of the contract. This is the reasoning of the principal case. *Barron* v. *Liedloff*, 95 Minn. 474, 104 N. W. 289; *Mesher* v. *Osborne*, 75 Wash. 439, 134 Pac. 1092. These cases seem unsupportable, since they confuse the liability arising from a breach of a duty imposed by law with a duty assumed by contract. See *Dustin* v. *Curtis*, 74 N. H. 266, 269, 67 Atl. 220. *Cf. Miles* v. *Janvrin*, 196 Mass. 431, 82 N. E. 708.

MECHANICS' LIENS — WAIVER OF LIEN BY CONTRACT BETWEEN MATERIALMAN AND CONTRACTOR. — By a written agreement between a materialman and the contractor, the materialman agreed not to assert his right to a mechanics' lien upon a building being erected for the defendant by the contractor. The defendant had paid the contractor more than was proper in view of the claims of materialmen, but did not learn of this agreement until suit was brought by the materialman to enforce his lien. *Held*, that the agreement did not constitute a waiver of the lien. *Massachusetts Bonding & Ins. Co.* v. *Realty Trust Co.*, 83 S. E. 210 (Ga.).

In the absence of estoppel, the question whether the materialman has waived his right to a lien is one of intention. *Johnson* v. *Spencer*, 49 Ind. App. 166, 96 N. E. 1041; *Lee* v. *Hassett*, 39 Mo. App. 67. This may be shown by acts inconsistent with the existence of a lien. *Green* v. *Fox*, 7 Allen (Mass.) 85. Or the materialman may waive his right by a contract with the owner. *Murray* v. *Earle*, 13 S. C. 87. But where there is merely a contract between the materialman and the contractor, as in the principal case, the owner is but incidentally benefited, and can take no advantage of the contract. Although there is an intention by the materialman to waive his lien, it would seem that it must run to the owner in order to be binding upon him as a waiver.

NEGLIGENCE — DUTY OF CARE — EFFECT OF VIOLATION OF STATUTE PROHIBITING THE EMPLOYMENT OF MINORS IN ELEVATORS. — The plaintiff's intestate, a boy less than eighteen years old, was allowed to run an elevator in